



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

DOCKET NO.: CWA-08-2003-0032

IN THE MATTER OF:

**SOUTH DAKOTA WHEAT GROWERS
ASSOCIATION**

Respondent

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

February 6, 2003
DATE

SIGNED
Alfred C. Smith
Regional Judicial Officer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

DOCKET NO.: CWA-08-2003-0032

In the Matter of:)
)
South Dakota Wheat Growers Association) **EXPEDITED CONSENT AGREEMENT**
)
Respondent.)

Complainant, United States Environmental Protection Agency, Region VIII, and Respondent, South Dakota Wheat Growers Association, by their undersigned representatives, hereby settle the civil cause of action arising out of violations of the Spill Prevention Control and Countermeasures (SPCC) Plan regulations found during an inspection on September 21, 2001, and agree as follows:

The Clean Water Act (the Act), as amended, 33 U.S.C. § 1321(b)(6), authorizes the Administrator of EPA to assess administrative penalties against any person who violates the oil pollution prevention (SPCC) regulations, promulgated at 40 CFR Part 112 under Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j). This authority has been properly delegated to the undersigned EPA official.

Respondent owns and/or operates a bulk fuel distribution facility located at 1000 4th Street NW, Huron, South Dakota.

Respondent admits its facility is subject to the SPCC regulations.

Respondent agrees to correct the items cited on the attached List of SPCC Violations within thirty (30) days unless an extension for achieving compliance is granted by EPA at its discretion.

Respondent admits that EPA has jurisdiction in this proceeding.

Respondent waives its right to a hearing before any civil tribunal, to contest any issue of law or fact set forth in this agreement.

This agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement.

This Agreement contains all terms of the settlement agreed to by the parties.

Respondent consents and agrees to the assessment of a civil penalty of \$1,750.00, which shall be paid by sending, via certified mail, a cashier's or certified check for that amount, payable to "Oil Spill Liability Trust Fund" along with a signed copy of this Agreement, to:

Jane Nakad
Technical Enforcement Program (8ENF-T)
USEPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

Respondent further agrees and consents that if Respondent fails to pay the penalty amount as required by this agreement once incorporated into the final order, or fails to make the corrective measures to obtain compliance as represented, this agreement is null and void, and EPA may pursue any applicable enforcement options.

The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this agreement and to bind Respondent to the terms and conditions of this agreement.

The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

Each party shall bear its own costs and attorneys fees in connection with this matter.

This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations described in this agreement.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION VIII,
Office of Enforcement Compliance and Environmental Justice, Complainant.**

By : **Elisabeth Evans for/**
Connally Mears, Director
Technical Enforcement Program

South Dakota Wheat Growers Association, Respondent.

By: **SIGNED** Name: **Ben Grismer**

Title: **Environmental Manager**

List of SPCC Violations

SPCC Plan [40 C.F.R. § 112.3]:

Failure to prepare and implement a facility SPCC Plan in accordance with 40 C.F.R. § 112.7.

The South Dakota Wheat Growers Bulk Plant's SPCC Plan was found to be deficient in the following areas:

Failure to amend the Plan following a change in facility storage capacity as required by 40 C.F.R. § 112.5(a).

Failure to review the Plan every three years as required by 40 C.F.R. § 112.5(b).

No spill prediction section as required by 40 C.F.R. § 112.7(b).

Fail-safe engineering of tanks not addressed as required by 40 C.F.R. § 112.7(e)(2)(viii).

Tank integrity testing not addressed as required by 40 C.F.R. § 112.7(e)(2)(vi).

Does not address secondary containment for truck loading/unloading areas in violation of 40 C.F.R. § 112.7(c) and (e)(4)(ii).

No discussion of warning/barrier systems to prevent premature vehicular departure in violation of 40 C.F.R. § 112.7(e)(4)(iii).

Lacks written procedures for inspections and for maintaining inspection records for three years in violation of 40 C.F.R. § 112.7(e)(8).

Inadequate discussion of facility security in violation of 40 C.F.R. § 112.7(e)(9).

SPCC measures are deficient in the following areas:

No secondary containment for truck loading/unloading areas in violation of 40 C.F.R. § 112.7(c) and (e)(4)(ii).

No warning/barrier systems to prevent premature vehicular departure in violation of 40 C.F.R. § 112.7(e)(4)(iii).

Facility is not fenced in violation of 40 C.F.R. § 112.7(e)(9)(i).

Master drain valves on oil storage tanks are not locked in violation

of 40 C.F.R. § 112.7(e)(9)(ii).

Starter controls for pumps not locked in “off” position in violation of 40 C.F.R. § 112.7(e)(9)(iii).

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **FINAL ORDER/EXPEDITED CONSENT AGREEMENT** in the matter of **SOUTH DAKOTA WHEAT GROWERS ASSOCIATION, DOCKET NO.: CWA-08-2003-0032** was filed with the Regional Hearing Clerk on February 6, 2003..

Further, the undersigned certifies that a true and correct copy of the document was delivered to Mike Risner, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt to:

Ben Grismer
South Dakota Wheat Growers Assoc.
110 Sixth Avenue, S. E.
Box 1460
Aberdeen, SD 57402-1460

and

Commander
U.S. Coast Guard
Finance Center
1430 A Kristina Way
Chesapeake, VA 23326

February 6, 2003

SIGNED

Tina Artemis
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON FEBRUARY 6, 2003.**